

March 22, 2018

The Honorable Orrin G. Hatch
Chairman
Senate Finance Committee
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Kevin Brady
Chairman
House Committee on Ways and Means
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Ron Wyden
Ranking Member
Senate Finance Committee
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Richard E. Neal
Ranking Member
House Committee on Ways and Means
1102 Longworth House Office Building
Washington, DC 20515

Re: IRS Reform—Recommendations of the National Association of Enrolled Agents

Dear Chairmen and Ranking Members:

Please find attached recommendations from the National Association of Enrolled Agents (NAEA) on reforming the Internal Revenue Service. NAEA represents the interests of over 55,000 enrolled agents (EAs) nationwide. EAs are tax experts, licensed by the Department of Treasury. They must pass a series of federally administered exams covering the Internal Revenue Code. Additionally, EAs are subject to background checks and ongoing continuing education and ethics requirements.

This document represents an accumulation of our formal submissions to Congress, testimony before the congressional committees, collaborative work with other practitioner groups, and concepts developed in consultation with our Government Relations Committee and membership at large. We appreciate working with you and your staff in your development of an IRS reform package, and we look forward to continuing the dialog to help move the agency forward for all taxpayers. It is our intention that this report act as a resource for you and your staffs as you develop legislation over the coming months.

A summary of our report is as follows:

- Congress should reassess and build on the recommendations for IRS governance and management in the Report of the National Commission on Restructuring the IRS by streamlining its membership and selection process; increasing its ability to keep the IRS on track for its strategic planning; ensuring that the IRS is free of any political, religious or racial bias; helping it better coordinate with Treasury IG for Tax Administration; and properly compensating top management.
- Workforce reform should focus on the agency's culture and leadership. To that end, IRS needs to have a dialog centered on its values and its approach to providing top-quality service to the public. The agency cannot provide excellent customer service if it cannot train and develop its staff and secure the right leadership.

- To ensure an adequate level of funding, and to hold the Service responsible for its performance, a reform effort should reestablish an annual joint congressional hearing. A joint hearing would provide congressional guidance on acceptable levels of service and enforcement and inform the appropriations process.
- IRS needs to provide effective, efficient, taxpayer-centered compliance activities in its examination, collection, and appeals functions. For instance, IRS should explore further alternative dispute resolution options; ensure compliance staff do not bypass an active power of attorney; increase the authority of and set higher standards for appeals staff; and incorporate a number of taxpayer rights changes included in the National Taxpayer Advocate's 2017 Purple Book.
- The tax professional community should be a critical part of any plan that hopes to create a well-run, efficient IRS. In 2017, taxpayers filed 132 million returns electronically; 79 million of those originated with roughly 700,000 paid preparers. In order to leverage the tax professional community, Congress should:
 - provide guidance on private sector electronic signature options for Forms 2848 and 8821 used by Circular 230 practitioners. IRS should debut tax practitioner online accounts that include a robust and secure means of communicating with IRS.
 - create a dedicated, executive-level practitioner services unit that would centralize and modernize its approach to all practitioners.
 - provide IRS authority to establish minimum standards for unenrolled tax preparers, empower the Office of Professional Responsibility to issue cease-and-desist letters to any person or corporation improperly using the agency's credential, and clarify who may verify any element of a return for purposes of qualifying for any federal program or benefit.

In sum, IRS should develop a strategic mission shared by its many stakeholders—employees, congressional overseers, and tax professionals alike. To help sustain this shared mission, Congress must consider governance, management, personnel, and budget. Only in this comprehensive approach do we believe the agency can be successful in its mission, which is to provide top quality service.

Please contact NAEA Executive Vice President Robert Kerr (rkerr@naea.org) with any questions or comments. Thank you for your work on an issue of great importance to all taxpayers.

Sincerely,



James R. Adelman, EA
President
National Association of Enrolled Agents

Enclosure (1) as stated

Cc: Senate Finance Committee
House Ways & Means Committee

Internal Revenue Service Reform Recommendations of the National Association of Enrolled Agents March 2018

The IRS mission is to “provide America’s taxpayers top quality service by helping them understand and meet their tax responsibilities and applying the law with integrity and fairness to all.”ⁱ

The National Association of Enrolled Agents (NAEA) represents the interests of over 55,000 enrolled agents (EAs) nationwide. EAs are tax experts, licensed by the Department of Treasury. They must pass a series of federally administered exams covering broad swaths of the Internal Revenue Code. Additionally, EAs are subject to background checks and ongoing continuing education/ethics requirements.

The Internal Revenue Service, for better or worse, touches more U.S. citizens than any other federal department or agency. It is the face of the federal government for most citizens. Increasingly, enrolled agents, who are the frontline representatives of taxpayers at every level of the tax administrative system, are expressing the view that the quality of taxpayer and practitioner service within IRS has deteriorated to an unacceptable level over the last decade.

The data available to the public backs up our members’ assessment. For instance, while IRS answered 87 percent of taxpayer calls in 2004, in 2016 the agency answered only 53 percent. The erosion in service between 2004 and 2016 is more alarming when we consider the following: the number of taxpayer calls the IRS received increased from 71 million to 104 million, yet the number of calls telephone assistants actually answered declined from 36 million to 26 million.

NAEA takes an expansive view of taxpayer service, which we submit encompasses nearly all of the agency’s external-facing functions. As a result, pre-filing issues (*e.g.*, tax ID numbers, withholding and estimated tax payment forms and instructions, walk-in service, access to prior year tax information); filing issues (*e.g.*, electronic filing, math error adjustments, ID theft); and post-filing issues (*e.g.*, compliance notices, audits—both office and correspondence—and collections) are included. Too often, policymakers and IRS create a false choice between providing service and assuring compliance. From a taxpayer’s perspective, any interaction with the IRS is essentially compelled.

Policymakers frequently refer to our tax system as one of voluntary compliance, yet we suggest the term is a misnomer; even “voluntary self-assessment” is a stretch. While many taxpayers file tax returns and respond to IRS inquiries because it’s the right thing to do, our experience tells us taxpayers are more compelled by fear of the consequences. Because taxpayers are fearful, and the agency so powerful, IRS and Congress must ensure the agency remains relentlessly focused on service grounded in fairness, accuracy and timeliness at all points of the tax administration process.

IRS should develop a strategic mission shared by its many stakeholders—employees, congressional overseers, and tax professionals alike. To help sustain this shared mission, Congress must consider

governance, management, personnel, and budget. Only in this comprehensive approach do we believe the agency can be successful in its mission, which is to provide top quality service.

To that end, we recommend the following reforms:

IRS Oversight, Governance, and Management Reform

The Report of the National Commission on Restructuring the IRS (the Commission) in 1997 highlighted an issue that once again plagues the agency: its inability to set and maintain consistent long-term strategy, develop and execute focused plans for improvement, and ensure its budget, staffing, and technology are aligned with organizational success.ⁱⁱ The Commission recommended comprehensive changes to IRS oversight and governance. Most have been set aside or ignored over the last five to ten years. NAEA urges Congress to reassess these recommendations and make changes where necessary.

- Reduce the IRS Oversight Board size to five private sector members—representing tax, legal and business expertise. The members would be appointed by the President to 5-year terms as under current law and not be subject to Senate approval.
- Increase the power of the board to review and approve all agency operational plans and any modifications to those plans.
- Require the IRS Commissioner to certify annually to the Board that IRS **does not** use any enforcement or approval criteria based on political, religious or racial standards.
- Empower the Board to direct TIGTA to investigate systemic issues involving customer service, enforcement resources and modernization.
- Allow the Board to award top executives bonuses based on specific success criteria established by the Board in consultation with Congress.

Workforce Reform

An organization's culture produces its results. The wrong culture produces the wrong results. The right culture produces the right results. The power of an organization's culture is pervasive.

The agency needs to have a dialog centered on its values and its approach to providing service to the public. We believe the IRS' adopted Taxpayer Bill of Rights is an excellent starting point. We also believe clear and consistent training is an essential element in moving the IRS towards a service orientation.

- Focus on culture and leadership.
 - Create and fund a dedicated training division within the IRS to increase competency and create the appropriate culture.
 - Streamline the IRS education process, ensuring that tax law and administrative policies be taught consistently throughout the country while guaranteeing that experienced personnel will not have to be taken offline to train new employees.

- Research state-of-the-art tax administration techniques at the state, local and international levels and incorporate these approaches into education materials and the Internal Revenue Manual.
- Focus IRS training on early and fair resolution of tax disputes.
- Provide the agency executive level flexibility.
 - Grant the IRS a reformed Streamlined Critical Pay Hiring Authority, stipulating the areas of expertise covered by the program.

IRS Budget Reform

The agency is handicapped by budgeting that is not only insufficient to meet its large—and growing—portfolio, but also inefficiently structured. The IRS for years has met the constraints of a shrinking real budget through attrition, yet shrinking through attrition is, to put it kindly, a suboptimal management technique. The Service has not been in real control of much of its staffing for years and presently faces demographics that should concern all.ⁱⁱⁱ

- Re-establish an annual joint Congressional hearing, charged with providing/reviewing:
 - a detailed congressional statement on levels of service and compliance;
 - strategic and business plans;
 - taxpayer service and compliance;
 - technology and modernization; and,
 - filing season performance.
- Authorize the Joint Committee on Taxation, in cooperation with the Congressional Budget Office, to provide an annual report on the Joint Hearing issues and estimates on the funding necessary to carry out these priorities.
- Make IRS user fees appealable to GAO. The agency must be able to provide clear, detailed costing estimates to those who are charged user fees, and must not charge user fees for services that largely improve the organization's own operations.
- Provide funding necessary to meet mutually agreed upon levels of service and compliance, or in the alternative, explain to the American people why these funding levels were not provided. Special funding attention should be provided to improve timeliness and efficiency, for instance:
 - Require IRS to communicate a decision within 30 days of a taxpayer response to an IRS notice or letter.
 - Provide compliance staff greater authority to settle cases early (IRS should also evaluate settlements based on a singular focus on early and fair resolution of disputes).

- Provide appropriate staffing at the points of significant taxpayer contact (such as all call centers and TAC counters) and training at all levels.
 - Charge the IRS with exploring technology options (*e.g.*, video-conferencing) to improve communications.
 - Provide adequate funding when increasing the agency's workload (*e.g.*, to implement the recent Tax Cuts and Jobs Act), recognizing:
 - taxpayers will need IRS guidance quickly and
 - frontline employees will need training on all aspects of the legislation.

Taxpayer Service/Dispute Resolution Reform

Both tax administrators and taxpayers are ill-served by delayed or protracted compliance activity. Taxpayers who are unable to address promptly positions taken on returns run the risk of compiling penalties on similar positions taken on subsequent returns. Further, taxpayers who enter the collection stream late are harder pressed to pay full balances due and the payments often cause greater hardship.

- Provide collection staff wider discretion to reach early agreements on payment plans and provide training to help staff facilitate taxpayer payments by resolving quickly cases that deviate slightly from the financial standards.
- Require IRS to reevaluate the National Standards for Collection Information Statements, either by adjusting the allowable living expenses for regional or local cost of living variations, or by returning to use of a dollar range, based on gross monthly income.^{iv}
- Increase the authority of and set higher standards for appeals personnel.
 - While we welcome and applaud IRS for the recent addition of video conferencing as a substitute for some in-person appeals hearings, we suggest additional provisions be implemented.
 - The knowledge, experience and authority of the appeals personnel should meet a higher standard than the campus appeals technical employees, who may have very little authority and may not grasp the intricacies of cases assigned to them.
- Incorporate a number of taxpayer rights changes from the National Taxpayer Advocate's 2017 Purple Book^v recommendations, including:
 - Authorize IRS to work with financial institutions to reverse misdirected deposits.
 - Revise the "Mailbox Rule" to apply to electronically submitted documents and payments in the same manner as it applies to mailed submissions.
 - Amend IRC § 6654(c)(2) to adjust estimated tax payment deadlines to occur quarterly.

- Harmonize reporting requirements for taxpayers subject to both FBAR and FATCA by eliminating duplication and excluding accounts a U.S. person maintains in the country where (s)he is a *bona fide* resident.
- Codify the rule that taxpayers can request equitable relief under IRC § 6015(f) any time before expiration of the period of limitations on collection.
- Authorize IRS to release levies that cause economic hardship for business taxpayers.
- Extend the time limit for taxpayers to sue for damages for improper collection actions.
- Require IRS to waive user fees for taxpayers who enter into low-cost installment agreements and evaluate potential revenue/compliance costs of future user fee increases.
- Hold taxpayers harmless when IRS returns funds levied from a retirement plan or account.
- Limit IRS' use of math error authority to clear-cut categories specified by statute.
- Clarify that taxpayers may raise innocent spouse relief as a defense in collection proceedings and bankruptcy cases.
- Require taxpayer consent before allowing IRS counsel or compliance staff to participate in appeals conferences.
- Ensure compliance staff clearly understand that bypassing an active POA is a taxpayer rights violation.
 - Congress should reemphasize and reaffirm the consequences of violations of 26 USC § 7525, to ensure that IRS personnel shall not ignore valid powers of attorney by directly contacting taxpayers by telephone or at their residences or places of business.
- Require IRS exam and collection personnel to offer alternative dispute resolution options.
 - IRS' expansion of Fast Track Settlement earlier this year is promising, bringing the opportunity for small business and individual taxpayers to resolve unique examination issues through appeals, allowing for consistency with large and mid-sized businesses.
 - We recommend IRS expand alternative dispute resolutions options to all taxpayers and that exam and collection staff be required to offer these options at the appropriate time.

Future State

We commend IRS for formulating strategies to meet taxpayers' needs in the future. Technology and preferences are changing rapidly—and the significant perils of identity theft and fraud are, unfortunately, keeping pace. On the one hand, the agency needs support and encouragement as well as resources, while on the other hand, agency leaders must remain mindful of taxpayer rights and resist the temptation of one-size-fits-all solutions.

Ultimately, the success of any future vision will be judged by whether it protects the right to a fair and just tax system. Part of any future state must include access to secure online communication for both taxpayers and taxpayers' representatives. To facilitate earlier and more efficient dispute resolutions:

- Congress should require the IRS to provide guidance on which widely used private sector electronic signature options will be acceptable for Forms 2848 and 8821 used by Circular 230 practitioners.
- The IRS should debut tax practitioner online accounts that include a robust and secure means of communicating with IRS employees. Correspondence audits cannot rely upon taxpayers or their representatives putting stacks of supporting documentation into the mail. Individual online accounts should display a Publication 1^{vi} equivalent when taxpayers use account payment options.

Practitioner Reforms

A focus on taxpayer rights is essential to any effort to reform the IRS' culture. The right to representation among those rights and we have several recommendations that would help both tax administrators and taxpayers to strengthen that right.

In 2017, taxpayers filed 132 million returns electronically and IRS categorized 79 million of those as paid preparer returns.^{vii} As of March 1, 2018, 728,000 individuals held current PTINs.^{viii} IRS' website is inarguably one of the most trafficked federal websites. Yet tax professionals—including some 300,000 enrolled practitioners—lack even an entry point on IRS' landing page. This fact suggests that IRS is not fully committed to the proposition that the professional preparer community is a critical part of the solution to making IRS a well-run, efficient organization. The Service is making efforts, to be sure, yet is missing significant opportunities to assure taxpayers that their preparers are at least minimally competent, and that they can be trusted. The tax professional community, well under a million souls, file 60 percent of all electronically filed returns.

- IRS should create a dedicated, executive-level practitioner services unit that would centralize and modernize its approach to all practitioners. All administration and oversight of third-party stakeholders (*e.g.*, Circular 230 practitioners; unenrolled preparers; tax software providers; e-filing; payroll providers) would be consolidated under the new executive.
- The Office of Professional Responsibility should be empowered to issue cease-and-desist letters to any person or corporation improperly using the enrolled agent credential—or using it in a fashion that could reasonably be construed as confusing—and granted authority to enforce the letter through the federal courts.
- Congress should provide IRS with the authority to establish minimum standards for unenrolled tax preparers.^{ix} Congress should override *Loving*^x and all subsequent cases relying on its holdings and provide specific authority for the IRS to require all non-credentialed paid tax preparers to meet minimum standards. Such standards should include passing a one-time competency exam administered under the auspices of the Department of Treasury, requiring tax compliance background checks, setting continuing education requirements, and requiring compliance with strict ethical standards.

- Congress should clarify that certified public accountants, enrolled agents and lawyers regulated under 31 USC § 330 who prepare a return may provide a statement verify any element of the return, such as adjusted gross income, for purposes of qualifying for any federal program or benefit.
- IRS should provide practitioners with a robust practitioner priority hotline (or hotlines) with higher-skilled employees who have the experience and training to understand and address more complex technical and procedural issues.
- Under the practitioner services unit, the IRS should assign **customer service representatives** (also known as a single point of contact) to each geographic area to address unusual or complex issues that practitioners were unable to resolve through the priority hotlines.

Conclusion

In the 20 years since Congress last tackled IRS reform, the environment has changed significantly. Identity theft has become a cottage industry, electronic commerce has become ubiquitous, and the Internet has changed all the rules—and altered all expectations. Yet what hasn't changed are the basics. Taxpayers still have the right to quality service, the right to challenge the IRS' position and be heard, the right to finality, the right to appeal, and the right to representation, to name a few.

The time to address our nation's tax administration system is now. Reform should encompass oversight; governance; management, workforce, and budget; taxpayer service/dispute resolution; future state; and practitioners. Above all, taxpayer rights and taxpayer service should drive the conversation.

We at the National Association of Enrolled Agents look forward to working with Congress to reform the Internal Revenue Service. Our staff and members stand ready to assist in considering these important proposals.

ⁱ <https://www.irs.gov/about-irs/the-agency-its-mission-and-statutory-authority>

ⁱⁱ The Report of the National Commission on Restructuring the Internal Revenue Service: A Vision for a New IRS, page 1.

ⁱⁱⁱ In 2016, then-Commissioner John Koskinen stated at his [annual National Press Club speech](#), “We expect more than 40 percent of the IRS workforce will be able to retire by 2019.” At the other end of the age spectrum, IRS had about 200 employees who were 25 or younger.

^{iv} As was the case prior to a 2007 IRS decision to apply a single dollar amount for food, clothing and other items, based on family size alone.

^v The [Purple Book](#), is a summary of 50 legislative recommendations she believes will strengthen taxpayer rights and improve tax administration. Each of these proposals is outlined at length within this document.

^{vi} Publication 1, [Your Rights as a Taxpayer](#), explains to a taxpayer his/her rights and the processes for examination, appeal, collection, and refunds.

^{vii} See IRS website: [2017 Filing Season Statistics](#), cumulative statistics comparing 12/30/2016 and 12/29/2017

^{viii} See IRS website: [Number of Individuals with Current Preparer Tax Identification Numbers \(PTINs\) for 2018](#)

^{ix} The Purple Book, *op.cit.* at recommendation 6.

^x [Loving v. IRS, 742 F.3rd 1013 \(D.C. Cir. 2014\)](#)